

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT TACOMA

RANCE POINTEC,

Plaintiff,

v.

JULIE GEOEGHGAN, CAROL  
THAMERT, DALE FETROE,  
JACQUELINE FLUAITT,

Defendants.

CASE NO. C12-5578BHS

ORDER ADOPTING REPORT  
AND RECOMMENDATION

This matter comes before the Court on the Report and Recommendation (“R&R”) of the Honorable Karen L. Strombom, United States Magistrate Judge. Dkt. 21. The Court having considered the R&R and the remaining record, and no objections having been filed, does hereby find and order as follows:

- (1) The R&R is **ADOPTED**; and
- (2) Defendants’ motion to dismiss (Dkt. 18) is **granted in part and denied in part** as follows:
  - (a) Defendants’ motion to dismiss Plaintiff’s claims against Defendant Jacqueline Fluaitt is **GRANTED** and the claims are **dismissed with prejudice and without leave to amend**;

- 1 (b) Defendants' motion to dismiss Plaintiff's claims for failure to  
2 exhaust is **DENIED**;
- 3 (c) Defendants' motion to dismiss Plaintiff's Eighth Amendment claim  
4 against Defendants Geoghegan, Thamert, and Fetroe and for  
5 qualified immunity is **DENIED**. Plaintiff may file an Amended  
6 Complaint within **twenty (20) days** of this order. If he fails to do so,  
7 the Court will grant Defendants' motion to dismiss; and
- 8 (d) This matter shall be re-referred to the Hon. Karen L. Strombom upon  
9 Plaintiff's filing of an Amended Complaint.

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11 Dated this 7<sup>th</sup> day of March, 2013.

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BENJAMIN H. SETTLE  
United States District Judge